

TEACHERS' RETIREMENT BOARD

Investment Committee

OPEN SESSION

SUBJECT: Quarterly Litigation Report ITEM NUMBER: 10
ATTACHMENT(S): yes
ACTION: _____ DATE OF MEETING: July 12, 2000
INFORMATION: x PRESENTER: Christopher Waddell

The Quarterly Litigation Report has been prepared as directed by the Investment Committee. Non-Investment litigation will be reported in the Retirement Board meeting.

STRS QUARTERLY LITIGATION REPORT
July 2000

PROPERTY ADVISOR: CB Richard Ellis

Wilshire Landmark I

Wang v. STRS (1994) STRS Counsel: Haight, Brown, & Bonesteel. Legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint and proceeding with preparation for trial.

Northrop Gruman Plaza

Sanders v. STRS, et al. (1994) STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance Company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

Chudnousky v. STRS (1995) STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation, which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case. Property manager for STRS has been deposed and discovery is ongoing.

Brien v. STRS (2000) STRS Counsel: to be assigned by insurance company. Ms. Brien reported a slip and fall in November 1999. The insurance carrier has been notified and accepted tender of the defense. Property manager One Source has been notified and will work together with insurance carrier to defend STRS.

Heideman v. STRS (2000) STRS Counsel: to be assigned by insurance company. Ms. Heideman alleges injuries suffered in a slip and fall exiting the garage elevator. The insurance carrier has accepted tender of the defense and will work in coordination with the property manager, One Source.

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Rancho Pacifica

STRS v. Nittok Tile (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has abandoned space and filed bankruptcy. STRS has filed a claim with the bankruptcy trustee through its counsel. Advisor will monitor bankruptcy claim. STRS has received \$7,100.00 under bankruptcy claim to date.

STRS v. Virtual Stock (1999) STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment and vacated property. Lease expires March 1999. **Advisor has determined that tenant has no assets and recommends that amount owed be written off.**

9720 Wilshire

STRS v. Inman, Weisz & Stein. (1998) STRS Counsel: Cox, Castle & Nicholson. Tenant has vacated space and is presently in default on rent due and owing under their lease. Advisor will seek judgment and pursue collection against tenant.

*** STRS v. Heroic Entertainment (2000)** STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease due to non-payment of rent. Complaint for Breach of Lease to obtain monetary judgement against tenant has been filed. Tenant has vacated the property.

Atlanta Industrial

STRS v. Never Late Air Freight (1999) STRS Counsel: Cofer, Beauchamp. Tenant has defaulted on lease payment. Unlawful Detainer action filed, writ of possession and judgement has been obtained. Advisor is marketing space to mitigate losses prior to further legal action.

ALAMO QUARRY

STRS V. Bungalow Home Studio (2000) STRS Counsel: Ernie Zachary Park. Tenant has breached lease via non-payment. Attempts by the advisor to contact tenant to negotiate a settlement have gone unanswered therefore unlawful detainer action will be commenced to obtain possession and monetary judgement against tenant.

STRS v. Classic Lady Golfer (2000) STRS Counsel: Ernie Zachary

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Park. Tenant has breached lease via failure to make payment. **Negotiations have resulted in a proposed settlement which is being documented.**

STRS v. Galleria De Art (2000) STRS Counsel: Kerr-Wilson. Tenant has breached lease via failure to make payments. Demand letter sent prior to initiation of litigation.

***STRS v. LYDA (2000)** STRS Counsel: Cox, Castle & Nicholson. This is a contract dispute arising from the development of the shopping center which was known to CalSTRS when we acquired the asset. There is a full indemnification rendered from the seller to CalSTRS and a \$5.3 million reserve to pay any judgement issued by the arbitration.

***STRS v. Eastman Interiors (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 11 bankruptcy. CalSTRS will file proof of claim for lost rent.

***STRS v. Nordic Track (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 11 Bankruptcy. CalSTRS will file proof of claim for lost rent.

***STRS v. Philman Imports (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS will file proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

***STRS v. Island Nut (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS will file proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

COASTAL TOWERS

***STRS v. A. Anthony Transportation (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

***STRS v. South Florida Surgical (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

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STRS v. JVA, Inc. (2000) STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

***STRS v. American International Financial Group (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

STRS v. Tasty Mix (2000) STRS Counsel Adrienne Promoff. Tenant breached lease by paying a check that returned NSF. Counsel will attempt to negotiate settlement prior to initializing legal action.

STRS v. Cryptronics (2000) STRS Counsel: Adrienne Promoff. Tenant has defaulted via non-payment, negotiations initiated with a proposed settlement of monthly payments of \$2,500.00 on the arrearage being made by tenant.

PROPERTY ADVISOR: Lend Lease

Anaheim Plaza Shopping Center

In Re Clothestime (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant filed bankruptcy on December 9, 1995 but continues to make payment to STRS and occupy space.

STRS v. El Pollo Loco (1999) STRS Counsel: Cox, Castle & Nicholson. Negotiation to enter into lease with tenant terminated when they refused in bad faith to sign corporate lease. Attempts will be made to seek reimbursement of costs and legal fees prior to litigation.

STRS v. Baskin Robbins (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted under lease via non-payment of rent. Unlawful Detainer action was commenced against tenant, Landlord has regained possession and monetary judgement which advisor will attempt to enforce against tenant.

Ruiz v. STRS (1999) STRS Counsel: Cuff, Robinson and Jones. Personal injury action filed by plaintiff alleging abduction from parking lot, assault and rape. Matter has been sent to insurance carrier who has retained counsel on behalf of STRS to defend action. A trial date has been set for March 27, 2000. Counsel for the insurance company will file a motion prior to trial in

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an attempt to have STRS dismissed from case.

STRS v. Kenny Rogers Roasters (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant is in default of Lease for non-payment of CAM charges and rent. Legal action has been initiated to regain possession of the premises and will seek monetary judgment against franchisee and guarantor Roasters Corporation. Tenant has filed for Bankruptcy protection and a proof of claim has been filed on behalf of STRS in the bankruptcy case. Tenant objected to STRS claim for future lost rent. STRS counsel has reached settlement on claim, which has been approved for payment by court. **Case closed.**

Pacific Financial Plaza

STRS v. Cal Fed (1999) STRS Counsel: Voss, Cook & Theil. Litigation involves a master lease with tenant Cal-Fed who has claimed that lease was terminated due to actions of landlord. Space had been sub-leased by Cal-Fed to two (2) sub-tenants without the permission of the landlord as required by the terms of the lease. Sub-tenants continue to pay rent into an escrow account while litigation is ongoing. STRS will seek declaratory relief judgment against Cal-Fed for determination of validity of lease and monetary judgement for damages suffered by STRS. Cal-Fed has cross-complained against sub-tenants and STRS which have been responded to by STRS counsel. Depositions of STRS real estate advisors have been postponed pending Cal-Fed's attempt to settle with sub-tenants. STRS in-house counsel attended mediation before a retired judge on March 2, 2000 and a mandatory settlement conference on March 3, 2000. Cal-Fed and STRS have tentatively agreed to settle the case. The mandatory settlement conference was continued until March 26, 2000 to allow time for Cal-Fed and the sub-tenants PIMCO and Wealth Management to resolve their respective claims. **CalSTRS has reached agreement with Cal-Fed to settle case and is presently attempting to re-structure leases with sub-tenants (PIMCO & Wealth Management) prior to signing settlement agreement.**

STRS v. Mid Atlantic Bagel (1999) STRS Counsel: Rudnick & Wolfe. Tenant has breached lease via non-payment, vacated premises and its parent company - Manhattan Bagel Company - has filed for protection from creditors in Bankruptcy Court. STRS counsel has filed a claim with the Bankruptcy Court for \$133,613.24 against Manhattan Bagel Company as guarantor of the lease and is attempting to negotiate with Mid Atlantic Bagel for a Termination Agreement to regain legal possession of the space.

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STRS v. Chung Sun Choi dba Plain N' Fancy Donuts (1999) STRS Counsel: Rudnick & Wolfe. Tenant has breached lease via non-payment. Negotiations have resulted in a payment plan which tenant is making payments according to its terms.

Joe Pacific Shoe Repairs v. STRS, et al. (1997) STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent. Case has been scheduled for trial and depositions and discovery continuing in preparation for trial. Case is being monitored by STRS counsel: Bendet, Fidell et al. with fees paid Case by the insurance carrier.

120 19th Street

STRS v. Communication Images (1999) STRS Counsel: Rudnick and Wolfe. Tenant has breached lease via non-payment of rent and has vacated property. Counsel is attempting to resolve matter without litigation.

University Office Park

Washington v. STRS (1999) STRS Counsel: Law Office of Daniel Hirshik. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of STRS. Cross-complaints have been filed against management company and security company on behalf of STRS.

Southrail Business Park

STRS v. Song DbA Woo-Ri (1997) STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for Bankruptcy. Collection of arrearage unlikely but advisor will file claim on behalf of STRS in Bankruptcy proceeding.

STRS v. Dundee (1998) STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under lease. Judgment obtained for money and possession. Possession of space has been regained by STRS. Advisor will attempt to collect money judgment from

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tenant.

Pacific North West Group B-B-1

Elbe v. STRS (1994) STRS Counsel: Delaney, Zemetis, Donahue & Durham (appointed by insurance company) Alleged slip and fall by an employee of tenant. The complaint was served in July, 1996. STRS Counsel has filed answer and cross-complaint against a cleaning company. Discovery is proceeding with deposition of plaintiff completed. Counsel has reviewed deposition as favorable to STRS, matter proceeding to trial. Trial date has been rescheduled for early 2000, STRS Counsel filed Summary Judgement motion to resolve case. **Case closed.**

Santa Clara Industrial

Lopez v. STRS, et al. (1993) STRS Counsel: Jones, LaMore, Brazier and Riddle (retained and paid by insurance company). Personal injury action for alleged slip and fall due to leak on roof. **Case has been resolved via settlement with insurance carrier. Case closed.**

Quarry Shopping Center

STRS v. Partyland (1997) STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

Non-Real Estate Investment Related Litigation

Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.

U.S. Bankruptcy Court of Colorado

Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General.

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of apposing counsel, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spin-off by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were

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replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spin-off was a conveyance in fraud of the creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital Appreciation Fund who shall provide a defense on behalf of the class of defendant's. There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval. Without disrupting the pending settlement on file with the Court, recent cases have raised a possible defense of Sovereign Immunity which will be pursued by counsel for CalSTRS. **Upon filing of the Sovereign Immunity defense, apposing counsel requested further settlement negotiations which may result in CalSTRS paying a minimal amount to the class to resolve the case.**

CalMicro Devices Litigation (1995) STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal. In addition, the CEO is subject to personal liability in the original class action. Judge Walker heard arguments on our motion for Summary Judgement against the CEO on Thursday, June 3. Thereafter, CalSTRS and ColPERA entered into a tentative settlement agreement with the former CEO (Chan Desaioudar) pursuant to which Mr. Desaioudar would convey to all of the class all of the shares under his control. A token number of these shares (3.293% of the total) will be held back and returned to him if he is exonerated in the criminal case. A mediation was held in San Francisco on April 24, 2000 in an effort to resolve the issues that kept this settlement from being finalized. **No settlement was reached, but discussions are ongoing.**

NASDAQ Litigation (1997) STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit originally filed in 1995. The case as currently filed alleges that the NASDAQ

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market makers—large brokerage houses—conspired to maintain an overly wide “spread” in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

On November 9, 1998, a class-action settlement of \$1.03 billion was approved by the Federal district court. As a member of the class, STRS will receive a portion of the proceeds from the settlement. CalSTRS settlement claim was filed on December 8, 1999, and the system will receive between \$1-million & \$3-million from the settlement. CalSTRS should receive the funds by the end of the year 2000.

EBS V. Barclays Global Investors, N.A. et al (1999) STRS Counsel: To be determined (class action) A class action has been filed in the United States District Court for the District of Delaware of which CalSTRS has been noticed as a possible defendant in this action. Plaintiff, EBS Litigation L.L.C. has brought action against all persons or entities who received at least 55 shares of the June 30, 1995 transfer of shares of Dave and Busters, Inc. as a result of a spin-off from Edison Brothers Stores, Inc. Plaintiff’s allege that at the time of the spin-off, Edison Brothers Stores, Inc. was not legally authorized to give stock and that the stock was given without adequate consideration by defendants. Legal staff will monitor case.

Note: * indicates new litigation cases added to Quarterly Report.